

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5767 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARSINGH DALPATSINGH

VAGHELA FRIEND OF DETENU

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr.N.M. Kapadia for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondents nos.1, 2 and 3.

The detention order dated 25-1-1999 passed by the respondent no.1-Commissioner of Police,Ahmedabad City against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "A" inter alia indicate that a Prohibition Case was registered against the petitioner vide CR. no.5009/98 dt.23-1-1999 at Odhav Naranpura Police Station wherein countrymade liquor was seized from the possession of the petitioner and the case is pending investigation. The grounds further indicate that two witnesses on assurance of their anonymity have supplied information regarding the incidents dated 30-12-1998 and 5-1-1999 in respect to the antisocial activity of the petitioner.

3. That in consideration of the said material, the respondent no.1 has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity which affects the maintenance of public order, the detention order is necessary, and hence, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that on the date of passing the impugned order, the petitioner was in judicial custody. Despite the said fact, the detaining authority while formulating the grounds of detention has failed to consider the aspect of less drastic remedy of opposing and cancellation of bail available under Sec.437(5) of the Cr.P.C. which shows non application of mind and as such the subjective satisfaction having been vitiated the impugned order is invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case, in penultimate paragraph of the grounds of detention, the detaining authority has

observed that the petitioner-detenu was in judicial custody in respect to registered case against the petitioner. However, the detaining authority has shown apprehension that the petitioner is likely to apply for bail and after getting himself released on bail is likely to indulge into antisocial activity. The said observation of the detaining authority discloses non application of mind on the part of the detaining authority on account of failure to consider the less drastic remedy available to the petitioner under Section 437(5) of the Cr.P.C. which has vitiated the subjective satisfaction rendering the impugned order invalid.

7. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 25-1-1999 passed by the respondent no.1-Police Commissioner, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Rafiuqkhan Bullekhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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